

APPEAL NO. 041218
FILED JULY 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 25, 2004. The record closed on April 27, 2004. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) average weekly wage (AWW) is \$458.09. In his appeal, the claimant contends that the hearing officer erred in not including the money that the employer paid him pursuant to a contract for the lease of his truck in the calculation of his AWW. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's AWW is \$458.09. The record reflects that 75% of the line haul revenue from the use of the claimant's truck was paid to the claimant. According to an appendix to the contract between the claimant and the employer, a motor carrier, 25% of the line haul revenue was paid to the driver of the truck and that amount was paid out of the 75% truck payment. The claimant had designated himself as the driver on the truck that was involved in the accident and as such he was paid the full 75% of the line haul revenue but he received two checks, which were identified as a truck account check and a payroll check, respectively. The claimant maintains that both the truck account and the payroll amounts should be considered in determining his AWW. The hearing officer rejected that argument and we cannot agree that he erred in doing so. The portion of payment identified as payroll was clearly intended to compensate the claimant for the personal service of driving the truck, while the other portion of the money paid was intended to compensate the claimant for the use of his truck. Thus, in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.1(c) (Rule 128.1(c)), that payment, which was made by the employer to the employee to reimburse him for the use of his equipment, is excluded from the calculation of the claimant's AWW. See *also* Texas Workers' Compensation Commission Appeal No. 92513, decided November 12, 1992 (payment under lease agreement for use of the claimant's truck is not wages and is not properly included in the calculation of AWW).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge